IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.
APPEAL NO.754 OF 2006
IN
NOTICE OF MOTION NO.1764 OF 2006
IN
SUIT NO.1497 OF 2006

Venkateshwara Pesticides & Allied Chemicals
Private Limited and another .. Appellants
v/s.
Dow Agrosciences, LLC, USA and another .. Respondents

Mr. V.R. Dhond with Mr. A. Rama Rao i/by M/s. S.R. Legal for the appellants.

Mr. Rahul Chitnis with Mr. Jay Joshi and Ms. Priyanka Sharma and Mr. Anushak Davar i/by M/s. Humranwala & Co. for the respondents.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 9TH NOVEMBER, 2006.

P.C.

Heard.

2. Admit

3. The appeal is heard finally at this stage.

4. The learned motion Judge did not accept the case of the plaintiff that the defendants' trade mark “PRINCE” is deceptively similar to the plaintiffs' trade mark “PRIDE”. As regards the infringement of the copyright and/or passing off action on the basis of

the label as a whole, the learned motion Judge observed that the plaintiffs' case showing co-relation between Exhibit `I" and Exhibit `D' could have been more specific. Having said so, the learned motion Judge, instead of comparing the label Exhibit `H' with the offending label Exhibit `I', compared Exhibit `D' with Exhibit `I' and granted ad-interim order. Prima facie, it appears to us that the plaintiffs' sought to establish their case by relying on Exhibit `H' to demonstrate that the defendants' are using the plaintiffs' original work as provided in Exhibit `H' and thereby they have committed colourable imitation for substantial reproduction in the infringement of the plaintiffs' copyright. From the impugned order, we do not find that the learned motion Judge even prima facie, found that the work shown in Exhibit `I' by the defendants is substantial reproduction or colourable imitation of the plaintiffs' work shown in Exhibit `H'.

5. Since the appeal is from the ad-interim order and notice of motion is pending, we do not intend to deal with the matter at great length lest it must prejudice the consideration of the notice of motion on merits, suffice, however, to observe that we find no justification in the order of the learned motion Judge granting ad-interim relief to the plaintiffs in the action of the infringement of the copyright and/or passing off on the basis of the label Exhibit `D'.

6. We, accordingly, set aside the order dated 1st September, 2006. We request the learned motion Judge to hear and decide the notice of motion itself expeditiously and, if possible, within three months from today. The defendants are directed to file reply affidavit

and the documents upon which they seek to place reliance within four weeks from today.

7. Needless to say, any observation made by us in this order shall not influence the consideration of the notice of motion by the learned motion Judge.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)